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**VIA CERTIFIED MAIL - -  
RETURN RECEIPT REQUESTED**

March 29, 2012

Managing Partners -  
Kinder Morgan Energy Partners, L.P.  
SFPP, L.P.  
1100 Town & Country Road  
Orange, CA 92868

Owner/Operator  
Brisbane Terminal  
SFPP, L.P.  
950 Tunnel Avenue  
Brisbane, CA 94005

**Re: Notice of Violations and Intent to File Suit under the Clean Water Act**

Dear Owners, Partners, Site Managers and other Responsible Parties:

## NOTICE

On behalf of Northern California River Watch ("River Watch") I am providing statutory notification to Kinder Morgan Energy Partners, L.P. and SFPP, L.P., (collectively, "Responsible Parties") as current owners and operators of the bulk storage and distribution terminal site located at 950 Tunnel Avenue in Brisbane, San Mateo County, California, of continuing and ongoing violations of the federal Water Pollution Control Act, also known as the Clean Water Act ("CWA") 33 U.S.C. § 1251 *et seq.*, in conjunction with continuing operations at this location.

Specifically, River Watch is providing statutory notification of continuing and ongoing violations of "an effluent standard or limitation", permit condition or requirement and/or "an order issued by the Administrator or a State with respect to such standard or

limitation" under CWA § 505(a)(1), 33 U.S.C. § 1365(a)(1), the Code of Federal Regulations, and the Regional Water Quality Control Board's Water Control Plan or 'Basin Plan,' as exemplified by Responsible Parties' unlawful discharges of pollutants from a point source to waters of the United States without a National Pollution Discharge Elimination System ("NPDES") permit.

This Notice also addresses Responsible Parties' ongoing violations of the substantive and procedural requirements of CWA § 402(p) and NPDES General Permit No. CAS000001, State Water Resources Control Board Water Quality Order No. 92-12-DWQ, as amended by Order No. 97-03-DWQ (General Industrial Storm Water Permit for Industrial Dischargers or "General Permit"). The CWA prohibits storm water discharges without a permit pursuant to 33 U.S.C. § 1342; 40 C.F.R. § 122.26.

The CWA regulates the discharge of pollutants into navigable waters. The statute is structured in such a way that all discharge of pollutants is prohibited with the exception of several enumerated statutory exceptions. One such exception authorizes a polluter who has been issued a NPDES permit pursuant to the CWA, to discharge designated pollutants at certain levels subject to certain conditions. The effluent discharge standards or limitations specified in a NPDES permit define the scope of the authorized exception to the CWA § 301(a), 33 U.S.C. § 1311(a) prohibition. Without a NPDES permit **all surface and subsurface** discharges from a point source to waters of the United States are illegal.

River Watch hereby provides notice that Responsible Parties have no NPDES permit allowing them to discharge pollutants from the Brisbane Terminal site identified in this Notice and numerous point sources including the storage tanks and other structures at and within the site, to waters of the United States as required by CWA § 301(a), 33 U.S.C. § 1311(a), CWA §§ 402(a) and 402(b), 33 U.S.C. §§ 1342(a) and 1342(b) and CWA § 402(p), 33 U.S.C. 1342(p).

CWA § 505(b) requires that 60 days prior to the initiation of a civil action under CWA § 505(a), a citizen must give notice of his/her intent to sue to the alleged violator, the U.S. Environmental Protection Agency and the State in which the violations occur. The CWA requires that any notice regarding an alleged violation of an effluent standard or limitation, or of an order with respect thereto, shall include sufficient information to permit the recipient to identify:

1. *The specific standard, limitation, or order alleged to have been violated.*

River Watch contends Responsible Parties have no NPDES permit allowing the discharge of pollutants from the Brisbane Terminal site and from numerous point sources within the Site including storage tanks, current and former structures and loading areas as further identified in this Notice, to waters of the United States as required by CWA § 301(a),



33 U.S.C. § 1311(a), CWA §§ 402(a) and 402(b), 33 U.S.C. §§ 1342(a) and 1342(b) and § 402(p), 33 U.S.C. 1342(p).

2. *The activity alleged to constitute a violation.*

To comply with this requirement, River Watch has set forth below a narrative describing with particularity the activities leading to CWA violations. In summary, the CWA requires that all discharges of pollution from a point source to a water of the United States without a NPDES permit are prohibited. River Watch alleges Responsible Parties are discharging pollutants including hydrocarbon contamination from the Brisbane Terminal site and various point sources within the site as identified in this Notice, to waters of the United States. These point sources are tanks, structures such loading areas and the like, some of which may have been subsequently removed. The solid waste and hazardous waste discharged from these tanks and other structures is also a point source. These point sources continue to discharge pollutants to surface waters adjacent to the site.

3. *The person or persons responsible for the alleged violation.*

The person or persons responsible for the alleged violations are Kinder Morgan Energy Partners, L.P. and SFPP, L.P. This Notice includes the named entities as well as all of their employees responsible for compliance with the CWA, and compliance with any applicable state and federal regulations and permits as relate to this site. The liability of Responsible Parties stems from their ownership or operation of this site, or is due to the activities conducted on this site by Responsible Parties, as well as their ownership and control of conduits which act as preferential pathways and point sources for the listed pollutants.

4. *The location of the alleged violations.*

The location or locations of the various violations are identified in records either created or maintained by or for Responsible Parties, including the records cited further in this Notice and the description of specific incidents referenced below. Generally, the site of each of the violations alleged by River Watch is the Brisbane Terminal, 950 Tunnel Avenue, Brisbane, California.

5. *The date or dates of violation or a reasonable range of dates during which the alleged activity occurred.*

Disposition, discharge and release of pollutants from the Brisbane Terminal site has been ongoing for years. The CWA is a strict liability statute with a 5-year statute of limitations; therefore, the range of dates covered by this Notice is March 26, 2007 through March 26, 2012. River Watch will from time to time update and supplement this Notice to

include all violations which occur after the date of this Notice. The majority of the violations identified in this Notice such as discharging pollutants to waters of the United States without a NPDES permit, failure to obtain a NPDES permit, failure to implement the requirements of the CWA, and failure to meet water quality objectives, etc., are continuous, and therefore each day is a violation.

6. *The full name, address, and telephone number of the person giving notice.*

The entity giving notice is Northern California River Watch, P.O. Box 817, Sebastopol, CA 95472, Tel. 707-824-4372, email: US@ncriverwatch.org. Northern California River Watch is a non-profit corporation organized under the laws of the State of California, dedicated to the protection and enhancement of the waters of the State of California including all rivers, creeks, streams and groundwater in Northern California.

River Watch has retained legal counsel with respect to the issues set forth in this Notice. All communications should be addressed to:

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## **SITE AND BACKGROUND HISTORY**

The Brisbane Terminal ("Site") is located at 950 Tunnel Avenue in an industrial area of Brisbane. The Site is bordered by Tunnel Avenue to the east and south, Union Pacific Railroad Company tracks to the west, and a timber-lined channel to the north, also known the Interior Drainage Channel ("IDC"). The IDC, considered an estuarine habitat, is directly connected to San Francisco Bay by tidal activity. The Bay is approximately 2,100 ft. directly east of the Site. The Brisbane Landfill property intervenes between the Site and the Bay.

SFPP, L.P., an operating partnership of Kinder Morgan Energy Partners, L.P., owns and operates a bulk petroleum storage and distribution terminal at the Site which was originally constructed in the 1960s. Part of the petroleum storage terminal was built over a portion of the Brisbane Landfill, which was decommissioned as a solid waste disposal site for the City of San Francisco in 1967. Aboveground storage tanks currently in place at the Site were built on bedrock in the western portion of the Site. Currently, the Site contains 21 such tanks utilized for the storage of gasoline, diesel and aviation fuels, as well as loading rack facilities for truck loading operations.

The Site is underlain by groundwater in two main zones: Zone A is a shallow water bearing zone that lies above bay mud and landfill refuse. Zone B is located at a deeper level beneath the bay mud which acts as a kind of aquitard between the two zones. The IDC channel fluctuates with the tide up to 3 feet. Water within the channel generally flows to the east towards San Francisco Bay and drains into the Bay on a daily basis, but has been observed flowing west during high tides. The tidal influence to adjacent groundwater in the vicinity of the IDC is claimed by consultants for Responsible Parties as not "significant," but some tidal influence of groundwater certainly continues to occur, potentially drawing contaminated groundwater away from the Site and out towards the Bay. Depth to groundwater here varies from a minimum of 0.52 ft. to 16.4 ft. bgs. Groundwater elevations typically exhibit seasonal fluctuations of 1 to 4 feet.

Groundwater on the eastern boundary appears to actually flow west from the Brisbane Landfill toward the loading rack area, forming a trough in the groundwater beneath the Site. Tidal influences are anticipated to occur here as well, ultimately pulling contaminated groundwater out towards the Bay, or towards the Guadalupe Lagoon – which is also waters of the United States. Given the hydrological connections between the Site and the Landfill, it is apparent that the plumes from each site are now commingled.

On the basis of monitoring reports for this Site, River Watch believes tidally influenced groundwater, affected by hydrocarbon contamination at the Site, reaches the IDC, and eventually drains into San Francisco Bay. Surface runoff from storm water also reaches the IDC, and also drains into the Bay via that channel.

Unauthorized releases have occurred at the Site on a number of occasions since the early 1990s. Jet fuel of an unknown volume was released in the Manifold Area in 1999. In February of 2001, an unknown volume of ethanol was released from AST BT-11. In October of 2003 approximately 48 barrels of fluid (gasoline, diesel or jet fuel) was released from a sump in the Tank Farm area. A mixture of diesel and turbine NAPH of an unknown quantity was released in 2005.

Remedial activity has been conducted at least since monitoring wells were installed in July of 1991. Subsequent remediation work consists of minimal dual phase extraction (11 days in total) to recover NAPL or NAPH, and over-excavation of contaminated soils on several occasions.

At the present time, remedial activity is limited to NAPL monthly or bi-monthly recovery efforts using hydrophobic absorbent socks or hand bailing at 6 recovery points (MP-1 through MP-6), and at monitoring wells MW-2, MW-12, MW-17, and MW-28. Other remediation is limited to approximately 18 monitoring wells focused on the presence of BTEX compounds and 7 oxygenates, and natural attenuation.



Analytical findings in mid-2011 reflect high levels of petroleum constituent contamination in addition to NAPL in several monitoring points. Methane at MW-1, MW-24 and MW-25 was found as high as 15,000 µg/l; TPHp (GRO) was found as high as 890 µg/l. Recently, other contaminant levels have been found to be fairly minimal, but at the present rate of bioremediation, consultants for Responsible Parties estimate the cleanup goals for the Site to be reached in the year 2040. River Watch believes it is unreasonable to wait 28 years before cleanup of this Site can be achieved.

While some bioremediation may be occurring, the effect of the commingling of the Site and Landfill plumes is leading to increasing contaminant levels for at least one monitoring well (MW-30). A review of monitoring reports indicates neither site is conducting anything more than monitoring of that particular well.

The IDC channel's surface waters are apparently tested in only one location (the "Creek Gauging Station" aka "CGS-1") and only twice each year at low tide. Semi-annual testing of the IDC at only one point is insufficient to assess the extent of seepage of hydrocarbon and other contaminants of concern into the IDC. Recent consultant reports confirm that in 2006 LFR noted a "potential for discharge of groundwater to surface water within the timber-lined channel [aka the IDC]." Groundwater measurements at monitoring wells adjacent to the IDC taken in 4<sup>th</sup> Quarter 2010 determined that groundwater contaminant levels in at least 1 instance exceeded the "ESL for Potential Discharge of Groundwater to Aquatic Habitat." On this point River Watch takes the position that there are no ESLs which allow contamination to the surface waters of the State of California without a specific allowance from a NPDES permit.

## **VIOLATIONS**

### **Discharge of Contaminated Stormwater**

Polluted stormwater containing petroleum hydrocarbons, BTEX compounds, oxygenates, as well as other materials from the Site is discharged, untreated, directly to the IDC which drains directly into San Francisco Bay. The IDC is inadequately monitored and inadequately protected. These pollutants are generally recognized as significantly injurious to human health and to complex ecosystems such as the Bay which has many designated beneficial uses including navigation, marine habitat, commercial and sport fisheries, shellfish harvesting, marine wildlife refuge, estuarine habitat, wetland habitat, fish migration and spawning, aquaculture, wildlife habitat, migration of aquatic organisms, recreation and industrial supply.

In addition to areas of the Site where free petroleum hydrocarbons are found in soils and groundwaters, methane at monitoring wells MW-1, MW-24 and MW-25 is recently found as high as 15,000 µg/l, and TPHp (GRO) is found as high as 890 µg/l.



Polluted stormwater run off is the biggest source of pollution of the nation's waterways. The intent of the Clean Water Act is to protect against this type of stormwater pollution.

### **Direct Discharges from Subsurface Releases**

Existing records indicate pollutants continue to be discharged from the Site to waters of the United States via subsurface, hydrologically connected, and contaminated groundwaters. Current and former above ground storage tanks and the loading areas are point sources contributing to the surface discharges. Other point sources include the drainage ditches and the IDC, which act as conduits for the transmission for pollutants from the Site to waters of the United States.

Pursuant to CWA § 301(a), 33 U.S.C. § 1311(a), the EPA and the State of California have formally concluded that violations by Responsible Parties as identified in this Notice are prohibited by law. Beneficial uses of surface waters are being affected in a prohibited manner by these violations. The EPA and the State of California have identified Responsible Parties' operations at the Site as a point source, the discharges from which contribute to violations of applicable water quality standards.

River Watch alleges that from March 26, 2007 to March 26, 2012, Responsible Parties have been in violation of the CWA by failing to acquire a NPDES permit and for discharging pollutants into waters of the United States without a NPDES permit. Each and every discharge is a separate violation of the CWA.

These enumerated violations are based upon review of the the RWQCB's files and Geotracker files for the Site. In addition to all of the above violations, this Notice covers any and all violations evidenced by records and monitoring data which Responsible Parties have has submitted (or have failed to submit) to the RWQCB and/or regulatory other agencies during the period fMarch 26, 2007 to March 26, 2012. This Notice also covers any and all violations which may have occurred, but for which data may not have been available or submitted, or which is not apparent from the face of the reports or data submitted to the RWQCB, Geotracker or other regulatory agencies.

The violations set forth herein are alleged to be continuing in nature in that the sources of pollution impacting surface waters have not been eliminated to date. Pursuant to CWA § 309(d), 33 U.S.C. § 1319(d), each of the violations described herein subjects Responsible Parties to a penalty for each day of violations occurring within five (5) years prior to the initiation of a citizen enforcement action. In addition to civil penalties, in the event suit is filed River Watch will seek injunctive relief in the interest of preventing further violations of the Act pursuant to CWA § 505(a) and § 505(d), 33 U.S.C. § 1365(a) and § 1365(d),

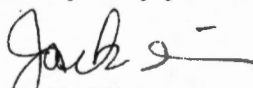
and such other relief as is permitted by law. CWA § 505(d), 33 U.S.C. § 1365(d) permits prevailing parties to recover costs of litigation, expert witness fees and reasonable attorney fees.

The violations of the CWA by Responsible Parties as set forth in this Notice affect the health and enjoyment of members of River Watch who reside and recreate in the affected watershed areas. The members of River Watch use the watershed for domestic water supply, agricultural water supply, recreation, sports, fishing, swimming, shellfish harvesting, hiking, photography, nature walks and the like. Their health, use and enjoyment of this natural resource are conditions specifically impaired by the violations of the CWA as alleged in this Notice.

### CONCLUSION

River Watch believes this Notice sufficiently states grounds for filing suit under the statutory and regulatory provisions of the CWA as to the Site. At the close of the notice period or shortly thereafter, River Watch intends to file suit against Responsible Parties for each of the violations as alleged herein. However, River Watch is willing to discuss effective remedies for the violations referenced in this Notice during the 60 day notice period. If you wish to pursue such discussions in the absence of litigation, we would encourage you to initiate such discussions immediately so that we might be on track to resolving the issues raised in this Notice. River Watch will not delay the filing of a lawsuit if discussions have not commenced within a reasonable time following the service of this Notice.

Very truly yours,



Jack Silver

JS:lhbm

cc: Administrator  
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